

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF PENNSYLVANIA**

4 JENNIFER ULAD,                                   )  
5                                   Plaintiff                                   )  
6                                   v.                                   ) **Case No.:**  
7                                   PERFORMANT RECOVERY, INC.                                   )  
8 F/K/A DIVERSIFIED COLLECTION                                   ) **COMPLAINT AND DEMAND FOR**  
9 SERVICES, INC.,                                   ) **JURY TRIAL**  
10                                   Defendant                                   ) **(Unlawful Debt Collection Practices)**

11                                   **COMPLAINT**

12                                   JENNIFER ULAD (“Plaintiff”), by and through her attorneys, KIMMEL &  
13 SILVERMAN, P.C., alleges the following against PERFORMANT RECOVERY,  
14 INC. f/k/a DIVERSIFIED COLLECTION SERVICES, INC. (“Defendant”):

15                                   **INTRODUCTION**

16                                   1.     Plaintiff’s Complaint is based on the Fair Debt Collection Practices  
17 Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”).  
18

19                                   **JURISDICTION AND VENUE**

20                                   2.     Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d),  
21 which states that such actions may be brought and heard before “any appropriate  
22 United States district court without regard to the amount in controversy,” and 28  
23  
24  
25

1 U.S.C. §1331, which grants this court original jurisdiction of all civil actions  
2 arising under the laws of the United States.

3  
4 3. Defendant conducts business in the Commonwealth of Pennsylvania  
5 and as such, personal jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

7  
8 **PARTIES**

9 5. Plaintiff is a natural person residing in Folcroft, Pennsylvania 19032.

10 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C.  
11 §1692a(3).

12  
13 7. Defendant, Performant Recovery, Inc. f/k/a Diversified Collection  
14 Services, Inc., is a collection company with its principal place of business located  
15 at 333 N. Canyons Parkway, Suite 100, Livermore, California 94551.

16 8. Defendant collects, and attempts to collect, consumer debts incurred,  
17 or alleged to have been incurred, for personal, family or household purposes on  
18 behalf of creditors and debt buyers using the U.S. Mail, telephone or internet.

19  
20 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §  
21 1692a(6), as it sought to collect a consumer debt from Plaintiff.

22  
23 10. Defendant acted through its agents, employees, officers, members,  
24 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
25 representatives, and insurers.

**FACTUAL ALLEGATIONS**

11. At all pertinent times hereto, Defendant was attempting to collect a consumer debt from Plaintiff.

12. The alleged debt at issue, a PNC Bank Federal Stafford Loan, arose out of transactions, which were primarily for personal, family, or household purposes.

13. Beginning in or before September 2013, Defendant sought to collect a consumer debt from Plaintiff.

14. In its attempts to collect the debt, Defendant repeatedly contacted Plaintiff's brother's place of employment and requested to speak with her.

15. Plaintiff has never given, or used, her brother's place of employment's telephone number as a contact number for herself.

16. In addition, Defendant would leave messages on the company's voicemail identifying itself and advising that it was attempting to contact Plaintiff.

17. Prior to its calls to her brother's place of employment, Plaintiff's brother had no knowledge of this alleged debt.

18. It was embarrassing and humiliating to Plaintiff to have her brother and his co-workers know that she had a debt in collection.

19. At no time has Plaintiff given Defendant consent to disclose debt information to third parties, including her brother.

1       20. Further, in its attempts to collect the alleged debt, Defendant  
2 contacted Plaintiff on her cellular telephone.

3  
4       21. On average, Defendant contacted Plaintiff two (2) times a day.

5       22. Further, when contacting Plaintiff, Defendant would call her at times  
6 when it was inconvenient for her to receive collection calls.

7       23. Specifically, Defendant contacted Plaintiff at 7:55 a.m.

8  
9       **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES**  
10       **ACT**

11       **COUNT I**

12  
13       24. Plaintiff incorporates the forgoing paragraphs as though the same  
14 were set forth at length herein.

15       25. Defendant's conduct, detailed in the preceding paragraphs, violated  
16 15 U.S.C. §§ 1692b(2) and 1692b(3).

17  
18       26. Section 1692b(2) of the FDCPA prohibits a debt collector, who is  
19 contacting any person for the purpose of obtaining location information, from  
20 disclosing to that person that the consumer owes a debt.

21       27. Section 1692b(3) of the FDCPA prohibits a debt collector from  
22 communicating with any person other than a consumer more than once unless  
23 requested to do so by such person or unless the debt collector reasonably believes  
24  
25

1 that the earlier response of such person is erroneous or incomplete and that such  
2 person now has correct or complete location information.

3  
4 28. Here, Defendant violated §§ 1692b(2) and 1692b(3) of the FDCPA by  
5 repeatedly calling Plaintiff's brother's workplace and disclosing Plaintiff's debt to  
6 brother and his co-workers.

7  
8 **COUNT II**

9 29. Plaintiff incorporates the forgoing paragraphs as though the same  
10 were set forth at length herein.

11 30. Defendant's conduct, as detailed in the preceding paragraphs, violated  
12 15 U.S.C. §§ 1692c(a)(1) and 1692c(b).

13  
14 31. A debt collector violates §1692c(a)(1) of the FDCPA by  
15 communicating with a consumer in connection with the collection of any debt at  
16 any unusual time or place or a time or place known or which should be known to  
17 be inconvenient to the consumer. In absence of knowledge of circumstances to the  
18 contrary, a debt collector shall assume that the convenient time for communicating  
19 with a consumer is after 8:00 a.m. and before 9:00 p.m., local time at the  
20 consumer's location.  
21

22  
23 32. Section 1692c(b) of the FDCPA states that except as provided in  
24 section 1692b, without the prior consent of the consumer given directly to the debt  
25 collector, or the express permission of a court of competent jurisdiction, or as



1        37. Section 1692d(5) of the FDCPA prohibits debt collectors from  
2 engaging a person in a telephone conversation repeatedly or continuously with the  
3 intent to annoy, abuse, or harass.  
4

5        38. Here, Defendant violated §§ 1692d and 1692d(5) of the FDCPA,  
6 when it repeatedly called her on her cellular telephone, including before 8:00 a.m.,  
7 because the natural consequence of such behavior is to harass and abuse Plaintiff.  
8

9                                    **PRAYER FOR RELIEF**

10        WHEREFORE, Plaintiff, JENNIFER ULAD, respectfully prays for a  
11 judgment as follows:

- 12                    a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);  
13                    b. Statutory damages of \$1,000.00 for the violation of the FDCPA  
14                    pursuant to 15 U.S.C. § 1692k(a)(2)(A);  
15                    c. All reasonable attorneys' fees, witness fees, court costs and other  
16                    litigation costs incurred by Plaintiff pursuant to 15 U.S.C. §  
17                    1693k(a)(3); and  
18                    d. Any other relief deemed appropriate by this Honorable Court.  
19  
20  
21  
22  
23  
24  
25

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, JENNIFER ULAD, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: December 30, 2013

KIMMEL & SILVERMAN, P.C.

By: 

Craig Thor Kimmel

Attorney ID # 57100

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

Phone: (215) 540-8888

Fax: (877) 788-2864

Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)